INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	3
Constitutional Provisions and Statutes Involved	4
Statement of the Case	4
A. Happenings Below	5
Reasons for Granting the Writ	8
Conclusion	13
Appendix A—Constitutional Provisions and Statutes	
Appendix B—Judgements	Date
(1) Original Judgment—Municipal Court	June 5, 1965
(2) Affirmance, Appellate Department-Superior Court	Dec. 28, 1965
(3) Denial of Petition for Rehearing in Appellate Department-Superior Court	Jan. 6, 1966
(4) Denial of Petition for Writ of Certiorari in the District Court of Appeal	Feb. 3, 1966
(5) Denial of Petition for Hearing in California Supreme Court	Mar. 2, 1966

Authorities

Page

Abelleira v. District Court of Appeal, 17 Cal. 2d 280-288 ..... 6, 10
Agnew v. Cronin, 148 Cal. App. 2d, 117 5
Auto Equity Sales, Inc., v. Superior Court, 57 Cal. 2d 450-454 ..... 6, 10
Dept. Mental Hygiene, v. Kirchner, 380 U.S. 194 11
Henry v. Mississippi, 379 U.S. 443 11
Hing v. Lee, 37 Cal. 313, 317-318 5
In Re Sterling, 63 Adv. Cal. 2d, 509 6
Lawrence v. Shaw, 300 U.S. 245 10
Love v. Griffith, 266 U.S. 32 ..... 11, 12
Lovell v. City of Griffin, 303 U.S. 444, 450 11

CONSTITUTIONAL PROVISIONS:

UNITED STATES CONSTITUTION:

Fourteenth Amendment 3, 4

STATUTES:

Federal:

38 U.S.C. Sec. 3101 ..... 3, 4, 5, 9
42 U.S.C. Sec. 407 ..... 3, 4, 5, 9

California Statutes:

California Code of Civil Procedure, Section 690.11 ..... 4, 9, 10
California Code of Civil Procedure, Section 690.22 ..... 3, 4, 5, 9
California Code of Civil Procedure, Section 690.26 ..... 3, 4, 5, 8, 9

Certified Record Attached

The Complaint
The Answer
Notice of Motion for New Trial
Reporter's Transcript of Proceedings
Notice of Motion for Summary Judgment
Minute Order granting judgment for defendant

IN THE

Supreme Court of the United States

October Term, 1966

No.....

EVERT L. HAGAN,

Petitioner,

vs.

APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, AND BANK OF AMERICA, NT&SA

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI.

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Evert L. Hagan hereby requests leave to file the attached petition for a writ of Certiorari.

Said motion is based upon the facts, reasons and grounds stated in the petition and petitioner relies thereon.

EVERT L. HAGAN

IN THE

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vs.

APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, AND BANK OF AMERICA, NT&SA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

EVERT L. HAGAN, petitioner herein, prays that a writ of certiorari issue from this Court to the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles, to review a judgment of the Municipal Court for the Los Angeles Judicial District, in an action bearing docket No. 46921, in said Municipal Court, entitled: *"Evert L. Hagan vs. Bank of America, NT&SA."* and bearing docket No. Civil A-11 226 in the said Appellate Department, entered on December 28, 1965.

OPINIONS BELOW

The Appellate Department of the Superior Court rendered no formal, written opinion. The Appellate Department merely affirmed, without written opinion, the judgment of the Municipal Court, which judgment was for the defendant bank; a request was made of the said Appellate Department for a rehearing and for a written opinion so that the matter could be certified to the District Court of Appeal for the State of California, and said request was denied without a reason being given.

JURISDICTION

The Judgment of the Appellate Deparment was entered on or about December 28, 1965; a petition in the Appellate Department for rehearing, timely filed, was denied on January 6, 1966; a petition for a writ of certiorari, timely filed in the District Court of Appeal, Second Appellate District, was denied on February 3, 1966; a petition for a hearing in the California Supreme Court, timely filed, was denied on March 2, 1966.

Juridiction of this Court is invoked pursuant to Title 28, U.S. Codes, Section 1257. (3).

QUESTIONS PRESENTED

In the case of a bank savings account, containing to the knowledge of the bank only funds derived from the payment to the depositor of Federal Pension funds, deriving from disability benefits for injuries sustained during World War I, and for payment of Social Security payments, said account being clearly designated "Pension Account:"

1. Is said account subject to all of the procedural requirements of California Code of Civil Procedure, Section 690.26?

2. Is said account exempt per se under the provision of 38 U.S. Code, Section 3101 and 42 U.S. Code, Section 407?

3. Is California Statute, Section 690.26, Code of Civil Procedure, repugent to the aforecited Federal Statutes, insofar as California Statute applies to Federal funds?

4. Is there unequal protection of the law under the terms of the 14th Amendment of the Federal Constitution in that Section, 690.22, by specific statement, exempts wage earners from the procedural requirements of Section 690.26, and denies that same exemption to the recipients of Federal Pension Funds?

5. Was petitioner denied due process of law, within the 14th Amendment, in that the trial court refused to consider the application of the Federal question

hereinabove set forth, which question was raised by paragraph VIII of the complaint in the trial court?

STATUTES INVOLVED

14th Amendment to the U.S. Constitution
38 U.S. Code, Section 3101
42 U.S. Code, Section 407
California Code of Civil Procedure, Section 690.11
California Code of Civil Procedure, Section 690.22
California Code of Civil Procedure, Section 690.26

The statutes are set out at length, and the pertinent portions of the cases are set forth in the Appendices attached hereto.

STATEMENT OF THE CASE

Petitioner, a veteran of the first World War, receives two United States pension checks each month; one a service disability benefit deriving from war service, and the other a social security check.

Petitioner deposits these checks in the defendant bank plainly marked "EVERT L. HAGAN, PENSION ACCOUNT." The record is clear that no monies from any other source were ever deposited in this account, and there has never been a withdrawal from it. The bank, as the record shows, admitted that these funds were exempt under the provisions of Section 690.22, California Code of Civil Procedure.

The bank permitted levy of two writs of execution to be satisfied against this account. The bank admitted that they did not notify petitioner until after the money had been removed from his account of said satisfaction. Subsequent to the time the money was withdrawn from the account, the bank mailed an "Advice of Charge" to petitioner which stated: "Your Account *has been* charged."

Thereafter, your petitioner brought an action in the Municipal Court charging the bank with liability for having mishandling his account in that they permitted a levy of execution to be made against funds which were exempt from execution.

HAPPENINGS BELOW

1. Petitioner in bringing his action in the Municipal Court relied upon two California cases (*Hing v. Lee,* 37 Cal. App. 313, 317-318 and *Agnew v. Cronin,* 148 Cal. App. 2d, 117), which held that a bank, under the circumstances sketched above, may be liable for any damage to a depositor; petitioner's complaint showed that petitioner relied upon Section 690.22, California Code of Civil Procedure, and 38 U.S. Codes, Section 3101 and 42 U.S. Codes, Section 407.

The trial court gave judgment for defendant bank, upon the basis of Section 690.26.

2. Petitioner appealed to the appellate department of the Superior Court for Los Angeles County, from the Municipal Court judgment. The appellate department merely affirmed the judgment without writing an opinion. Thereafter petitioner duly applied to that court for a rehearing, and in his application, specifically asked the court to write an opinion, so that the case could be certified to the District Court of Appeals. Also petitioner asked the appellate department for a reason or reasons for its affirmance of the Municipal Court's judgment, in order to have a record before this Honorable Court. The appellate department denied all three requests, again without writing an opinion.

3. Petitioner firmly believes that the appellate deparment of the Superior Court, as well as the trial court, acted in excess of jurisdiction in that they had clearly disregarded the doctrine of state decisis. (*Abelleria vs. District Court of Appeal,* 17 Cal. 2d, 280-288; *Auto Equity Sales, Inc., v. Superior Court,* 57 Cal. 2d 450, 454; 20 Cal. Rpt., 321).

Petitioner applied for a writ of certiorari to the District Court of Appeal, Second Appellate District. The clerk stated that a filing there would be useless, because of Rule 62, California Rules on Appeal and the case of *In re Sterling,* 63 Adv. Cal. 2d, 509. However, on February 2, 1966, petitioner prevailed on the clerk's office to accept the petition and filing fee and it was duly filed and the fees paid thereon. On Febru-

ary 3, 1966, the District Court of Appeal, denied the petition, without opinion, and gave notice of such denial to petitioner, by mailing him a post card.

Petitioner does not know why the petition was denied. In view of the statement of the clerk's office, and the citation of the rule and the case above noted, petitioner deduces that the denial was based upon the belief of the District Court of Appeal that it lacked jurisdiction in the matter.

4. Thereafter, your petitioner petitioned the California Supreme Court for a hearing in order to secure uniformity of decisions, and to settle important questions of law raised in the instant matter, and again, said petition for hearing was denied, and again by post-card notice.

REASONS FOR GRANTING THE WRIT

I.

Section 690.26, California Code of Civil Procedure, is repugnant to the aforesaid provisions of the U.S. Codes; the acts of the defendant bank herein complained of are in deregation of the exemptions granted to petitioner by Federal Statutes. Not only are the personal property rights of petitioner adversly affected, but also affected are the personal property rights of every veteran drawing a Federal pension and each and every pensioner under the Social Security Laws, and each and every person drawing a pension from Federal sources. This does not affect petitioner alone, but, literally thousands of persons within the State of California. This is not a private matter, a quarrel between petitioner and the bank; this is a matter of public interest.

II.

The questions presented are of great importance to the administration and handling of Federal Veterans Pension benefit funds, and Federal Old Age Pensions, Social Security funds. Both being Federally issued funds, they should be held to be exempt from attachment and/or execution under State Procedural Statutes.

III.

In view of California Code of Civil Procedure, Section 690.22, which reads in part:

> "... a pension or retirement or disability or death, or other benefits from the UNITED STATES GOVERNMENT, or from the State, County, or City ... is exempt from execution or attachment ..." petitioner contends that the State of California, in recognizing the exemptions set forth in U.SC.A. 38 U.S. Codes, Section 3101 and 42 U.S. Codes, Section 407 (*Porter vs. Aetna Casualty & Surety Co.*, 370 U.S. 159) has denied the equal protection of the law afforded to wage earners, under California Code of Civil Procedure, Section 690.11, which reads in part:
>
> "...One half of the earning of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26."

This affords the wage earners an exemption from the procedural statute (690.26), but requires pensioners to abide by the procedural statute. It is respectfully called to the attention of this Honorable Court that the moneys paid to petitioner from social security funds, derive in great part from his own earnings;

these are just as much earnings as the money is paid and protected under Section 690.11. The only difference is the time of the payment.

IV.

An exceptionally strong showing was made in the petition for a writ of certiorari to the District Court of Appeal and in the petition for hearing in the California Supreme Court, and petitioner raised an abundance of substantial questions, each not plainly frivolous, and each requiring appellate determination on the merits. The District Court of Appeal and the California Supreme Court, nevertheless refused to hear the petitions in the matter. In so doing, these Courts committed unsupportable error of far reaching dimensions and have brought about a fundamental denial of justice, and denial of due process to this petitioner. (*Lawrence vs. Shaw,* 300 U.S. 245).

V.

Inasmuch as jurisdiction is clearly given to the District Court of Appeal and to the California Supreme Court, to entertain petitions for a writ of certiciorari in matters arising out of acts in excess of jurisdiction, in the appellate department of the Superior Court, (*Auto Equity Sales, Inc., v. Superior Court,* 57 Cal. 2d, 450, 454, 20 Cal. Rpt., 321; *Abelleira v. District Court of Appeal,* 17 Cal. 2d, 280-288), your peti-

tioner was denied due process of law when these two appellate courts in the exercise of their discretion, refused to hear his petitions. Said petitioners were brought in an effort to avoid the situation noted by this Court in *Dept. of Mental Hygiene,* 389 U.S. 194.

VI.

The Federal question herein presented may be raised at any level. (*Henry v. Mississippi,* 379 U.S. 443). It was raised in the complaint itself, paragraph VIII thereof). It was raised in the District Court of Appeal and the California State Supreme Court. Petitioner, has never, at any point received a ruling on the Federal question herein presented.

In *Love v. Griffith,* 266 U.S. 32, and in *Henry v. Mississippi, supra,* it was clearly held by this Court, in *Henry supra* that:

> ". . .These justifications have no application where the State ground is purely procedural . . .
>
> Accordingly, we have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of the Federal question, is itself, a Federal question. Cf. *Lovell v. City of Griffin,* 303 U.S. 444, 450. As Justice Holmes said:
>
> 'When as here, there is a plain assertion of Federal rights in the lower court, local rules as to how far it shall be reviewed on appeal do not

necessarily prevail. . . . Whether the right was denied or not given due recognition by the (state court) . . . is a question as to which the plaintiffs are entitled to invoke our judgment.' (*Love v. Griffith*, 266 U.S. 32, 33-34).

". . . In every case we must inquire whether the enforcement of a procedural forfeiture serves such a state interest. If it does not, the State procedural rule ought not be permitted to bar vindication of important Federal rights."

VII.

As is indicated in above petition, your petitioner "touched all the bases," in this matter, the case originating in the Municipal Court of the Los Angeles Judicial District, appealing to the appellate department of the Superior Court of the State of California, for the County of Los Angeles, petitioning the District Court of Appeal, Second Appellate District, for a writ of certiorari and petitioning the California State Supreme Court for a hearing, in his effort to receive due process and equal protection of the law, but it has been denied as set forth above.

CONCLUSION

In order to protect the integrity, and to implement the intent of the Congress of the United States, to preserve to veterans and other pensioners, the benefits of exemptions granted to them by the laws of the United States, this writ of certiorari should issue to review the application of a state procedural statute and to determine whether said state Section 690.26, California Code of Civil Procedure, is in derogation of and contrary to, the provisions of USCA 38 U.S. Codes, Section 3101 and 42 U.S. Code, Section 407.

Respectfully submitted:

EVERT L. HAGAN,
In Pro Se

DATED: May 27, 1966

Appendix

APPENDIX A

Constitutional Provisions and Statutes Involved:

Fourteenth Amendment United States Constitution

38 U.S.C. Section 3101a:

"Payments of benefits due or to become due under and law administered by the Veterans Administration shall not be assignable . . . and such payments made or to be made to or on account of a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors and shall not be liable to attachment or siezure by or under any legal or equitable process, whatsoever, either before or after receipt by the beneficiary."

42 U.S.C. Section 407

California Code of Civil Procedure::

Section 690.11 EARNINGS—"One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26."

Section 690.22 — MONEY RECEIVED AS PENSION OR BENEFIT—"All money received by any person, a resident of the State, as a pension, or retirement or disability or death or other benefit, from the United States Government, or from the

State, or any county, city or city and county, . . . whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited, loaned or invested by him, is exempt from execution or attachment."

Section 690.26 — HOW EXEMPTION RIGHTS AVAILED OF:—"(1) If the property mentioned in Section 690.1 to 690.26, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall deliver to the levying officen an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all the facts necessary to support his claim . . ."

APPENDIX B

Judgments

	Date
(1) Original Judgment — Municipal Court	June 5, 1965
(2) Affirmance, Appellate Department-Superior Court	Dec. 28, 1965
(3) Denial of Petition for Rehearing in Appellate Department - Superior Court	Jan. 6, 1966
(4) Denial of Petition for Writ of Certiorari in the District Court of Appeal	Feb. 3, 1966
(5) Denial of Petition for Hearing in California State Supreme Court	Mar. 2, 1966